

1 **WO**

2  
3  
4  
5  
6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
8

9 Larry James Rady,

10 Petitioner,

11 vs.

12 United States of America,

13 Respondent.  
14  
15

) No. CV 16-01294-PHX-FJM  
) CR 04-00585-PHX-FJM

16 **ORDER**

17 The Court has before it Petitioner's Motion to Vacate under 28 U.S.C. §2255 (Doc. 1), the  
18 Government's Response (Doc. 4), and exhibits, Petitioner's Reply (Doc. 5), the Report and  
19 Recommendation (Doc. 6), Petitioner's Objections (Doc. 7), and the Government's Response  
20 to the Objections (Doc. 8).

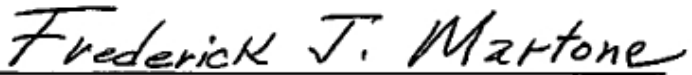
21 Petitioner contends that his two armed robbery convictions under prior Arizona law are  
22 not violent felonies within the meaning of 18 U.S.C. §924(e)(2)(B)(i), which requires as an  
23 element, "the use, attempted use, or threatened use of physical force against the person of  
24 another." Petitioner relies on *Johnson v. United States (Curtis Johnson)*, 559 U.S. 133, 140  
25 (2010), which defined "physical force" to mean "force capable of causing physical pain or  
26 injury to another person." The magistrate judge rejected this contention, in reliance on *State*  
27 *v. Bishop*, 698 P.2d 1240, 1243(Ariz. 1985), construing the prior Arizona robbery statute to  
28 require force "of such a nature as to show that it was intended to overpower the party  
robbed."

1 Petitioner objects to the R&R and contends that the prior Arizona robbery statute, A.R.S.  
2 §13-641, included robbery broader than that defined in *Bishop*.

3 Although the law related to what constitutes a violent felony is admittedly a mess, in this  
4 and other contexts, Petitioner's contention splits the hair too finely under any interpretation.  
5 Petitioner was twice convicted of *armed* robbery, which required the use of a gun or other  
6 deadly weapon. One cannot commit armed robbery without using or threatening to use  
7 physical force against another, within the meaning of §924(e)(2)(B)(i), and the gun or other  
8 deadly weapon is "capable of causing physical pain or injury" within the meaning of *Curtis*  
9 *Johnson*. We thus accept the magistrate judge's recommended disposition (Doc. 6).

10 Accordingly, it is ORDERED DENYING Petitioner's Motion to Vacate (Doc. 1). It is  
11 further ORDERED DENYING a certificate of appealability under Rule 11, Rules Governing  
12 Section 2255 Proceedings, for the reason that Petitioner has not made a substantial showing  
13 of the denial of a constitutional right under 28 U.S.C. 2253(c).

14 DATED this 15<sup>th</sup> day of February, 2017.

15  
16 

17 Frederick J. Martone  
18 Senior United States District Judge  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28